

## **Remarks**

### **I. Introduction**

This is in response to the Final Office Action dated September 25, 2009. In response to the finality of the Office Action, Applicant submits a Request for Continued Examination herewith.

The Office Action rejected claims 1, 2, and 5-10 under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art in view of U.S. Patent No. 5,983,068 to Tomich et al. ("Tomich").

The Office Action rejected claims 11, 13-16, 20-23, and 30 under 35 U.S.C. 103(a) as being unpatentable over Tomich in view of Applicant's admitted prior art.

The Office Action rejected claims 29 and 31 under 35 U.S.C. 103(a) as being unpatentable over Tomich and Applicant's conceded prior art and further in view of U.S. Patent No. 6,298,373 to Burns et al. ("Burns").

In response, Applicants have amended claims 1, 11, 14, 20, and 30. Claims 2-4, 12-13, 15, 17-19, and 24-28 were previously cancelled. Claims 1, 5-11, 14, 16, 20-23, and 29-31 remain for consideration.

### **II. Interview Summary**

An interview was conducted between Examiner Sheleheda and Applicant's representative Joseph G. Fenske, Reg. No. 54,592, on December 17, 2009. The rejection of claims 1, 11, 20, and 30 under 35 U.S.C. §103 as being unpatentable over Tomich and alleged Applicant admitted prior art were discussed. The Examiner agreed that the amendments to claims 1, 11, 20, and 30 herein overcome the current rejections under Tomich. The Examiner indicated that additional search and consideration would be required.

III. Rejections under 35 U.S.C. §103

Independent claim 1 was rejected as being unpatentable over Applicant's admitted prior art in view of Tomich.

In order to "establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art." In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Furthermore, "all words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). See also MPEP § 2143.03. The Applicant's allegedly admitted prior art and the cited reference, separately or in combination, do not teach all of the limitations of currently amended independent claim 1. Therefore, Applicants request the withdrawal of the rejections under 35 U.S.C. §103(a).

The subject area of the present invention relates generally to the delivery of communication signals and in particular, to a system and method for delivering television services via a fiber optic network without being subject to right-of-way franchise fees.

Figure 2a depicts one embodiment of the system and method for delivering communication signals which is described in paragraphs [0035]-[0043] of the specification as filed. In one embodiment, central office 202 of system 200 transmits telephony and data signals through fiber optic strand 212 to multiplexer 206. A public right-of-way 214 is located between central office 202 and multiplexer 206 such that fiber optic strand 212 must cross or pass through right-of-way 214 to reach multiplexer 206. Signals that traverse public right-of-way 214 require the provider of the signals (e.g. the administrator of system 200) to pay telephone franchise fees. In order to avoid incurring additional fees for the transmission of a video signal across public right-of-way 214, video signals are transmitted wirelessly. Wireless receiver 204 is located on a side of public right-of-way 214 opposite central office 202. Wireless receiver 204 receives over-the-air video signals and transmits the video signals to multiplexer 206 through a fiber optic strand 216. Multiplexer 206 combines the telephony, data, and video signals for transmission through a single fiber optic strand 218 to optical network unit 208.

Optical network unit 208 separates the combined signal into its individual telephony, data, and video signals, and converts the individual fiber optic signals into electronic signals for deliver through drop 220 to subscriber 210.

Paragraph [0043] of the specification as filed describes an embodiment in which multiplexer 206 is installed in fiber optic strand 220 between optical network unit 208 and subscriber 210. This aspect is claimed in currently amended independent claim 1 which includes the limitations of:

a multiplexer on the second side of the right-of-way located between and in communication with the optical network unit and the subscriber via fiber optic strands;

Applicant's allegedly admitted prior art and Tomich, separately or in combination, do not disclose these limitations.

Tomich pertains to a photonic home area network for interfacing an external communications data network with a plurality of buildings, residential or commercial, in a neighborhood. Although Figure 3 of Tomich depicts a wireless rooftop unit 22 and fiber optic cables 200 connected to set top box circuit 24, fiber optic cable 200 can be used to replace rooftop unit 22 and is not described as being used in conjunction with rooftop unit 22. Further, Tomich Figure 3 does not depict a multiplexer located between wireless rooftop unit 22 and a subscriber via fiber optic strands. Thus, Tomich does not disclose the limitations of "a multiplexer on the second side of the right-of-way located between and in communication with the optical network unit and the subscriber via fiber optic strands" as recited in currently amended independent claim 1. Applicant's allegedly admitted prior art does not provide the limitations missing from Tomich.

The Office Action appears to indicate that Figure 1 of the present application and the accompanying description in the specification as filed are Applicant admitted prior

art. Regardless of whether Figure 1 and the accompanying description are admitted prior art, Figure 1 and the accompanying description do not disclose a multiplexer located between an optical network unit and a subscriber, via fiber optic strands, for multiplexing video signals from a wireless receiver with telephony and data signals received from a central office. Thus, the Applicant's allegedly admitted prior art does not disclose the limitations of "a multiplexer on the second side of the right-of-way located between and in communication with the optical network unit and the subscriber via fiber optic strands" as recited in currently amended independent claim 1.

For reasons discussed above, Tomich and Applicant's allegedly admitted prior art do not disclose each and every limitation of currently amended independent claim 1. As such, the cited references and the Applicant's allegedly admitted prior art cannot render independent claim 1 unpatentable. Accordingly, Applicant respectfully request withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a).

Independent claims 11, 20, and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tomich in view of Farber and Applicant's allegedly admitted prior art for reasons similar to those discussed above in connection with claim 1. Claims 11, 20, and 30 have been amended in a manner similar to currently amended independent claim 1. As such, Tomich, Farber, and Applicant's allegedly admitted prior art do not disclose each and every limitation of currently amended claims 11, 20, and 30 for reasons similar to those discussed above in connection with independent claim 1. Accordingly, Applicant respectfully request withdrawal of the rejections of claims 11, 20, and 30 under 35 U.S.C. §103(a).

For the reasons discussed above, all independent claims are allowable over the cited art. Allowance of all independent claims is requested.

All remaining dependent claims are dependent upon an allowable independent claim and are therefore also allowable.

IV. No New Matter has Been Added

The amendments to claims 1, 11, 20, and 30 do not add new matter. Support for these amendments can be found at least in Figure 2 and paragraphs [0036]-[0043] of the specification as originally filed. The amendments to claim 14 do not add new matter and were made to correct the dependency of claim 14 in light of the cancellation of claim 13.

V. Conclusion

For the reasons discussed above, all pending claims are allowable over the cited art. Reconsideration and allowance of all claims is respectfully requested.

If this communication is filed after the shortened statutory time period has elapsed and no separate Petition is enclosed (or the enclosed Petition is insufficient), the Commissioner of Patents and Trademarks is petitioned, under 37 C.F.R. § 1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 C.F.R. § 1.135. The fee under 37 C.F.R. § 1.17 should be charged to our Deposit Account No. 06-2143.

Respectfully submitted,

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